

IN THE MATTER OF

: BEFORE THE

JOHN TACCHETTI

: HOWARD COUNTY

Petitioner

: BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 08-002S

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DECISION AND ORDER

On July 21, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of John Tacchetti, for a variance to erect a sign 4 feet from the Baltimore National Pike right-of-way ("ROW") in a B-2 (Business: General) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Marvin Singer, Esquire, represented the Petitioner. Mark Joseph Aiello testified in support of the petition. Susan W. Rura and Francis J. Rura appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property has an address of 8594 Baltimore National Pike (US 40) and is

located in the 2nd Election District in Ellicott City (the "Property"). The Property is referenced on Tax Map 17, Block 24, as Parcel 636.

2. The 1.3-acre Property is located at the intersection of westbound US 40 and Rogers Avenue. It is generally rectangular. The Property is longest along US 40 and the Rogers Avenue lot line has a somewhat sharp U-shape.

3. The Property is currently used, in main part, as a showroom and for storing vehicles for an automotive dealership.

4. Vicinal Properties. To the dealership's north, at 3161 Rogers Avenue, is the B-2-zoned, one-story building housing J.B.A. Certified Used Cars. To the west, across Rogers Avenue at the US 40 intersection is the B-2 zoned O'Donnell Honda Dealership. To the southwest, across US 40 are the B-2 zoned Rite Aid store and the PNS Bank. To the east, on US 40, is the B-2 zoned Big Screen Store.

5. The Petitioner is requesting a variance under Section 3.501.C of the Sign Code to erect a 22-foot high by 7.33-foot wide, 161-square-foot, freestanding pole identification sign with a 4-foot ROW setback rather than the 161-square foot setback required in relation to the total sign area and the 44-foot setback required in relation to the sign height. The petition addendum states that the overall area of the proposed sign is less than the existing sign.

6. The proposed sign will be internally illuminated. At its top, on both sides, a four-foot high section will contain the words "INFINITI" below the brand logo. The sign would be located in the southwestern corner of the Property in the same location as the current sign.

7. Mr. Aiello testified to being an Infiniti franchiser. The proposed sign is a new and required update brand sign that he must install as an Infiniti franchiser. He stated he is not allowed to modify the sign.

8. This section of US 40 has a steep grade, which obstructs motorists' view of the existing sign from both the east and westbound travel lanes of US 40.

9. Petitioner's Exhibits 1-22 are photographs of the approach to the dealership from east and westbound US 40 and from north and southbound Rogers Avenue. These photographs indicate that a long line of utility poles, existing signage and trees totally block the view of the sign. They also show the eastbound view of the existing sign is blocked by a line of utility poles, existing signage, and structures on adjacent properties until motorists are about 100 feet from the Rogers Avenue/US 40 intersection.

10. According to the Sign Plan, the speed limit on US 40 in this area is 45 miles per hour.

11. Susan W. Rura and Francis J. Rura testified that the existing sign obstructs motorists' view as they right turn onto Rogers Avenue from westbound US 40.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Property is located along US 40, a highway with a dependency on nonlocal use. The section of US 40 is also significantly sloped. I therefore conclude these conditions lead to

practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

Existing buildings, signs, several wooded areas, and the steep grade of US 40 impede motorists' view of a complying sign, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

The proposed sign will be reduced in height and area, compared to the existing sign, and situated in the same location as the existing sign. Petitioner's Exhibits also depict a right turning lane on US 40 to Rogers Avenue, which allows motorists to stop and check oncoming traffic signalized turning lane on eastbound US 40, which provides access to Rogers Avenue. Although the opponents argued the existing sign made it difficult to make a right hand turn from US 40 onto Rogers Avenue, they presented no testimony of evidence to support this claim. I therefore conclude the sign will be generally separated from vicinal commercial and residential properties

and will not result in a dangerous traffic condition.

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The proposed sign will be placed in the same location as the existing sign and will be smaller in overall sign area. I therefore conclude the proposed sign is the minimum necessary to afford relief and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this 28th day of July 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of John Tacchetti for a variance under Section 3.501.C of the Sign Code to erect a 22-foot high by 7.33-foot wide, 161-square-foot, freestanding pole identification sign with a 4-foot ROW setback rather than the 161-square foot setback required in relation to the total sign area and the 44-foot setback required in relation to the sign height is hereby **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.